

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 4587 of 1996

WITH

SPECIAL CIVIL APPLICATIONS NOS 477 & 710 OF 1997

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 - YES 2 TO 5 NO

DYANDEV MAHADU SONAR

Versus

STATE OF GUJARAT

Appearance: IN ALL THE PETITIONS :

MR VM DHOTRE for Petitioners

SERVED for Respondent No. 1

MR VD GHARANIA AGP for Respondent Nos. 2 TO 5

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 08/09/97

ORAL JUDGEMENT

All the above referred three petitions involve identical question of law and are, with the consent of the learned advocates, disposed of by this common judgment.

The petitioners in all these three petitions have entered the service of the respondents as Armed Constables. In course of service, they earned further promotion to the post of Head Constable and retired from service as Head Constable Grade-I. On 5th July, 1991,

the Government passed a Resolution under which it introduced the scheme, popularly known as "Higher Grade Scheme". under which, the Government servants suffering from stagnation, were offered the benefit of Higher Grade on their completing continuous service of 9 years in the same cadre, subject to the terms and conditions provided therein. In view of the the said Scheme and the modifications made thereafter, all the petitioners, under orders made on 2nd February, 1993 by the respondent No.4, were were given the benefit of Higher Grade i.e. the petitioners were offered the payscale of Rs. 1640-2900 the one that is applicable to the Police Sub Inspector. The cash benefit was also paid to all the petitioners. In spite of the grant of the aforesaid benefit, the said benefit has not been given effect to in the matter of the retiral benefits i.e. retiral benefits of the petitioners have been computed on the basis of the payscale received by the petitioners prior to the above referred order dated 2nd February, 1993 in the scale which was admissible for Head Constable Grade-I. Feeling aggrieved, the petitioners have preferred these petitions.

Learned AGP Mr. Gharania has appeared for the respondents. He has submitted that all the petitioners have earned more than two promotions and, therefore, in view of the Scheme which is introduced on 16th August, 1994, the petitioners are not entitled to the benefit of Higher Grade and they are rightly not been given benefit of Higher Grade so far as their retiral benefits are concerned.

Government having introduced the scheme of Higher Grade on 5th July, 1991 and having implemented the same, realised that it was unable to bear the financial burden and that on account of the benefit of the Higher Grade, the State Government servants received salary far higher than the Central Government employees. Keeping in view several problems that were faced by the Government on account of the implementation of the Higher Grade Scheme introduced on 5th July, 1991, the same was replaced by a new scheme introduced on 16th August, 1994. In paragraph 3 (2) of the said Scheme, it is provided that the first Higher Grade shall be paid to the Government servants after completion of 9 years' service. However, if such Government servant has earlier earned more than two promotions, the said benefit would not be available to such Government servant. Mr. Dhotre, learned advocate appearing for the petitioners has argued that all the petitioners have retired from service before the year 1993 and the above Government Resolution dated 16th

August, 1994 can not be applied to the petitioners. I am afraid, I can not accept this contention. The Government Resolution dated 5th July, 1991 has been replaced by the subsequent Resolution dated 16th August, 1994. In my view, therefore, the Government Resolution dated 5th July, 1991 has become non-est and whatever benefit of the Higher Grade is available to a Government servant that can be paid only the Government Resolution dated 16th August, 1994 and under any modifications made thereto. Obviously, the Government Resolution dated 16th August, 1994 has been given retrospective effect and the benefit of Higher Grade can be granted only under the said Resolution. It must be borne in mind that the Government servants have a right to receive salary in the scale determined under the relevant rules. Thus, none of the Government servants has either a fundamental right or a statutory right to receive salary in the scale higher than the one prescribed under the relevant rules. Such right flows from Government Resolutions alone and the same cannot be held to have statutory character. The terms and conditions on which such higher grade can be granted as modified from time to time must, therefore, be strictly adhered to. I am, therefore, of the view that if any of the petitioners herein has earned more than two promotions in course of their service, such petitioners could not have been given benefit of Higher Grade upon completion of 9 years' service as Head Constable Grade-I. If at all such benefit is granted, certainly, same can not be given effect to for pensionary benefits.

The question, therefore, is whether the petitioners have earned more than two promotions in course of their service. All the petitioners have entered service as Constables and have retired from service as Head Constable Grade-I. Obviously, they have earned atleast one promotion as Head Constable i.e. from the post of Constable to the post of Head Constable. Earlier the Head Constabulary was divided into four groups and promotion from the post of Constable was offered to that of Head Constable Grade-IV, and further promotions to the posts of Head Constable Grade-III, Grade-II and Grade-I. However, in the years 1967 and 1973, the Head Constabulary was rearranged. The Head Constabulary hitherto divided into four groups, was rearranged into three groups and in the year 1973 it was further rearranged into two groups. In course of rearrangement, certain Head Constables serving in lower Grades were absorbed in the Higher Grade i.e. as Head Constable Grade-II or Head Constable Grade-I. It appears that such absorption of the petitioners in the Higher Grade is treated as promotion earned by them. It must be

noted that if the petitioners have been absorbed in any of the Higher Grades in Head Constabulary, same can not be treated as promotion earned. It was merely a rearrangement of Head Constabulary and the petitioners can not be refused benefit of Higher Grade on the ground that they have earned such promotion. It is the specific case of the petitioners that they have earned only two promotions i.e. one from the post of Constable to the post of Head Constable in the lower grade and from the Head Constable in lower grade to that of Head Constable Grade-I. These categorical statements made in the petitions are not controverted. Mr. Gharania has referred to the written instructions received by him and has submitted that each of the petitioners had earned three promotions. However, I can not rely upon the written instructions read out before me. The counter-affidavit has been made by the Assistant Commandant in the office of the respondent No.4. He, however, has not denied the assertion made by the petitioners that they had earned two promotions. No specific averment is found in the counter-affidavit to the effect that each of the petitioners had earned more than two promotions. In absence of any categorical statement or even categorical denial, the assertions made by the petitioners are required to be believed. It appears that on account of the rearrangement of the Head Constabulary, all the petitioners in Special Civil Application No. 4587 of 1996 were promoted to the post of Head Constable Grade-I from the post of Head Constable Grade-IV. Petitioner in Special Civil Application No. 477/97 also earned his first promotion to the post of Head Constable Grade-IV and further promotion as Head Constable Grade-I. The petitioners in Special Civil Application No. 710/97 earned their first promotion from the post of Constable to that of Head Constable Grade-II and further promotion as Head Constable Grade-I. Thus, I find that all the petitioners herein have earned two promotions in course of their service. I believe that the petitioners can not be denied the benefit of the Higher Grade, which is already given to them on 2nd February, 1993, under the shelter of paragraph 3 (2) of the Government Resolution dated 16th August, 1994 referred to hereinabove. The petitioners are, therefore, entitled to the retiral benefits on the basis of the Higher Grade given to them under the order dated 2nd February, 1993.

The petitions are, therefore, allowed. The respondents are directed to revise the retiral benefits paid to the petitioners on the basis of the last pay received by them in the scale of Rs. 1640-2900

sanctioned under order dated 2nd February, 1993. Rule nisi issued in each of the petitions is made absolute. There shall be no order as to costs. Registry is directed to keep a copy of this judgment in Special Civil Application No. 477/97 and Special Civil Application No. 710/97.

JOSHI